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08/050554

SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/050,554 04/20/93 DOUBEK

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ASHER, K EXAMINER

F3M1/0629

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ART UNIT PAPER NUMBER

3307

6

DATE MAILED: 06/29/94

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 1/27/94 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 1 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                   |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/>  |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-18 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.

3. ☐ Claims \_\_\_\_\_ are allowed.

4. ☒ Claims 1-18 are rejected.

5. ☐ Claims \_\_\_\_\_ are objected to.

6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

7. ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed on \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation).

12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

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5 Claims 1-16 are provisionally rejected under the judicially  
created doctrine of obviousness-type double patenting as being  
unpatentable over the claims of copending application Serial No.  
08/048,589. Although the conflicting claims are not identical,  
they are not patentably distinct from each other because the  
claims in all cases have the same elements renamed and  
rearranged.

10 This is a provisional obviousness-type double patenting rejection  
because the conflicting claims have not in fact been patented.

15 The following is a quotation of the first paragraph of 35 U.S.C.  
§ 112:

20 The specification shall contain a written description of the  
invention, and of the manner and process of making and using  
it, in such full, clear, concise, and exact terms as to  
enable any person skilled in the art to which it pertains,  
or with which it is most nearly connected, to make and use  
the same and shall set forth the best mode contemplated by  
the inventor of carrying out his invention.

25 The specification is objected to under 35 U.S.C. § 112,  
first paragraph, as the specification, as originally filed,  
does not provide support for the invention as is now  
claimed.

30 The original disclosure does not support the terminology of  
claims 17 and 18, i.e. the "pair of end surfaces, "surfaces  
of a corresponding pair of extensions with said extensions  
in a said pair ...". The Examiner is not clear as to what  
35 is actually being claimed, therefore art can not be applied  
to these claims.

40 Claims 17 and 18 are rejected under 35 U.S.C. § 112, first  
paragraph, for the reasons set forth in the objection to the  
specification.

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The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

5 A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10 Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

15 Claims 1, 2, 8, 9, 11, and 12 are rejected under 35 U.S.C. § 103 as being unpatentable over Sawyer.

20 With regard to claims 1 and 2, it is noted that Sawyer teaches applicant's device as is broadly recited with the exceptions of separate "intermediate segments" and "resilient means". In Sawyer the wire (7) acts as both. The mere replacement of edge connections for center connections (claim 1) is not of patentable significance, given the lack of any unexpected result due therefrom. With regard to claims 8, 9, 11, and 12, note the hooks of Sawyer and page 2, column 1, paragraph 1.

30 Claims 3, 4, and 16 are rejected under 35 U.S.C. § 103 as being unpatentable over Sawyer as applied to claim 1 above and further in view of Brennan.

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Sawyer teaches a simple nasal dilator comprising two nose attachment members and a tensioning member connecting the two. Brennan teaches an adhesively mounted nasal dilator that is formed from multiple layers each of which extends across the nose from one nostril to the other. The replacement of the single tensioning member layer and multiple attachment sites of Sawyer, with a single and continuous attachment site, and tensioning member mounted on the attachment layer would have been obvious to one of ordinary skill in the art to as such would merely have involved the replacement of separately mounted elements for integrally mounted elements.

Claims 5-7, 10, and 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, AND UPON FILING OF A PROPER TERMINAL DISCLAIMER.

Applicant's arguments filed 1/27/1994, have been fully considered but they are not deemed to be persuasive.

Applicant's arguments directed to "unexpected results" are not persuasive because the "...intractable problem in nonlinear continuum mechanics..." is no more than the already known research and experimentation developed years ago for peel and stick bandages ("BAND-AID" brand (TM) bandages). Further, none of the involved elements recited in the arguments are found in the claim language, i.e.

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"nonlinear skin base being frequently in motion",  
"frequently subject to..." is not recited in the claims.  
Applicant's remarks directed to the alleged lack of  
teachings of the references applied to the claim language  
are also not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the  
extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL  
ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS  
ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO  
MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE  
ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE  
THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED  
STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION  
IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R.  
§ 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE  
ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR  
RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS  
FINAL ACTION.

An inquiry concerning this communication should be directed to K.  
L. Asher at telephone number (703) 308-0858.

*Kimberly L. Asher*  
Kimberly L. Asher  
Examiner

May 31, 1994